

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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BENZION LEBOVITS, as Trustee of
the Weberman Family Irrevocable Life
Insurance Trust,

Plaintiff,

-against-

PHL VARIABLE INSURANCE
COMPANY,

Defendant.

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MEMORANDUM AND ORDER

Case No. 12-CV-6397 (FB) (RML)

Appearances:

For the Plaintiff:

IRA S. LIPSIUS, ESQ.
Lipsius-Benham Law LLP
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Kew Gardens, NY 11415

For the Defendant:

PATRICK J. FEELEY, ESQ.
Dorsey & Whitney LLP
51 West 52nd Street
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BLOCK, Senior District Judge:

The joint motion to vacate the Court's memorandum and order of August 9, 2016, is denied because the parties have not shown extraordinary circumstances justifying vacatur. *See U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18 (1994). Whether vacated or not, the memorandum and order remains only persuasive authority, the opinion of a single district judge,

At an informal conference, defendant's counsel alluded to the possible collateral estoppel effect of the order in a case before Judge Ross. That concern does

not present an extraordinary circumstance because collateral estoppel “precludes relitigation of issues actually litigated *and necessary to the outcome of the first action.*” *Parklane Hosiery Co. v. Shore*, 439 U.S. 322, 326 n.5 (1979) (emphasis added). This case was dismissed based solely on plaintiff’s failure to tender the required premium; the issues addressed in the August 9th memorandum and order were not necessary to that result. And even if the order had any preclusive effect, it would have retained that effect had defendant succeeded on appeal instead of agreeing to settle.

SO ORDERED.

/S/ Frederic Block
FREDERIC BLOCK
Senior United States District Judge

Brooklyn, New York
November 2, 2017